

United States District Court
Eastern District of New York

X

JOEL ALVARADO, On behalf of themselves and others similarly situated,

Plaintiff,

AFFIDAVIT

18 Civ. 2915

S.J.F.

S.I.L.

v.

GC DEALER SERVICES INC., JENNIFER AYALA, ANTHONY AYALA, JACK BECKERMAN, In their individual capacities,

Defendants.

X

STATE OF NEW YORK) ss.:
COUNTY OF NASSAU)

STEVEN G. LEGUM, being duly sworn, deposes and says:

1. Your deponent is the attorney for the defendants and, in that capacity, familiar with this matter.

He submits this affidavit and the affidavit of Anthony Ayala in partial opposition to the plaintiff's motion for permission to proceed as a collective action.

2. A claim under the Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*) defines an enterprise subject to the act as an employer which has employees engaged in commerce which has a gross volume of business done in excess of \$500,000.00. 29 U.S.C. § 203 (s) (1). While defendants maintain that they are not engaged in commerce, they recognize that courts have not entertained this argument on a Rule 12 motion, but must await discovery and then seek the relief under Rule 56. Nevertheless, the second component requires no interpretation; it is governed by a strictly defined monetary threshold. As the accompanying affidavit of Anthony Ayala establishes, the business, or claimed enterprise, did not exist prior to 2016. Further, in that first year of operation, the business, as documented by the annexed tax return, grossed well under \$200,000.00.

Exhibit "B" annexed hereto.

3. Given the low threshold to establish the right to pursue the first step of the collective action process, defendants advised counsel that they were not opposing the motion with respect to the years 2017 and

2018. However, given that there is conclusive documentary evidence of the lack of federal jurisdiction with respect to the year 2016, defendants would not consent to such relief with respect to any employees employed exclusively in that year. Such offer was declined. Accordingly, defendants oppose the motion with respect to employees employed exclusively in the year 2016.

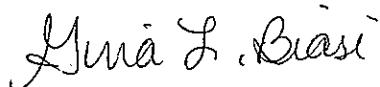
4. Defendants also respectfully call to the Court's attention the proposed notice attached to the motion. That "canned" notice, lists the name of the attorneys for the defendants from another action. To that extent, defendants object to the proposed notice.

WHEREFORE, defendants respectfully pray for an order denying the motion to the extent that any relief is sought prior to the year 2017 and to the extent of approving a notice which contains the incorrect name and address of counsel for the defendants.



STEVEN G. LEGUM

Sworn to before me this
7th day of November, 2018.



GINA L. BIASI
Notary Public
State of New York
Qualified in Suffolk County
No. 02BI6244636
Commission expires July 11, 2019

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Plaintiff,

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Defendants.

X

STATE OF NEW YORK) ss.:
COUNTY OF NASSAU)

ANTHONY AYALA, being duly sworn, deposes and says:

1. Your deponent is a defendant in this action and fully and personally familiar with the facts related thereto.
2. On June 28, 2016, the corporate defendant, GC Dealer Services Inc., came into existence, as reflected by the records of the New York State Secretary of State, which record is annexed hereto as exhibit "A." Thereafter, such entity began operations.
3. The business of the corporate defendant is providing personnel to car dealerships for the purpose of washing, vacuuming, and, if need be, waxing automobiles. It does no other business. The corporate defendant operates out of its corporate headquarters in Lynbrook, New York. It has provided personnel to two car dealerships, one in Nassau County and one in Suffolk County. It provides no other services and does nothing in interstate commerce.
4. During the year 2016, the corporate defendant's total revenues were not in excess of \$500,000.00.

As reflected by a copy of its tax return, its revenues that year were \$164,612.00.

Sworn to before me this
7th day of November, 2018.



STEVEN G. LEGUM ANTHONY AYALA
Notary Public
State of New York
Qualified in Nassau County
No. 02LE4721741
Commission Expires 5/31/2021 ✓

EXHIBIT A

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through November 1, 2018.

Selected Entity Name: GC DEALER SERVICES INC.

Selected Entity Status Information

Current Entity Name: GC DEALER SERVICES INC.

DOS ID #: 4970043

Initial DOS Filing Date: JUNE 28, 2016

County: NASSAU

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

JENNIFER AYALA
11 DOROTHY PLACE
LYNBROOK, NEW YORK, 11563

Chief Executive Officer

JENNIFER AYALA
11 DOROTHY PLACE
LYNBROOK, NEW YORK, 11563

Principal Executive Office

GC DEALER SERVICES INC.
11 DOROTHY PLACE
LYNBROOK, NEW YORK, 11563

Registered Agent

JENNIFER AYALA
11 DOROTHY PLACE
LYN BROOK, NEW YORK, 11563

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
1000	Par Value	.01

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 28, 2016	Actual	GC DEALER SERVICES INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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EXHIBIT B

Form 8879-C

IRS e-file Signature Authorization for Form 1120

OMB No. 1545-0123

Department of the Treasury
Internal Revenue ServiceFor calendar year 2016, or tax year beginning JUN 28, 2016, ending DEC 31, 2016**2016**

► Do not send to the IRS. Keep for your records.

► Information about Form 8879-C and its instructions is at www.irs.gov/form8879c.

Name of corporation

Employer identification number

GC DEALER SERVICES INC.

Part I Tax Return Information (Whole dollars only)

1 Total income (Form 1120, line 11)	1	164,612
2 Taxable income (Form 1120, line 30)	2	82,068
3 Total tax (Form 1120, line 31)	3	16,153
4 Amount owed (Form 1120, line 34)	4	16,447
5 Overpayment (Form 1120, line 35)		

Part II Declaration and Signature Authorization of Officer. Be sure to get a copy of the corporation's return.

Under penalties of perjury, I declare that I am an officer of the above corporation and that I have examined a copy of the corporation's 2016 electronic income tax return and accompanying schedules and statements and to the best of my knowledge and belief, it is correct, and complete. I further declare that the amounts in Part I above are the amounts shown on the copy of the corporation's electronic income tax return. I consent to allow my electronic return originator (ERO), transmitter, or intermediate service provider to send the corporation's return to the IRS and to receive from the IRS (a) an acknowledgement of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of the corporation's federal taxes owed on this return, and the financial institution to debit the entry to this account. To revoke a payment, I contact the U.S. Treasury Financial Agent at 1-888-353-4537 no later than 2 business days prior to the payment (settlement) date. I acknowledge the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I have selected a personal identification number (PIN) as my signature for the corporation's electronic income tax return and, if applicable, the corporation's consent to electronic funds withdrawal.

Officer's PIN: check one box only

I authorize DUBLER C.P.A., P.C. to enter my PIN 11783
 do not enter all zeros

As my signature on the corporation's 2016 electronically filed income tax return.

As an officer of the corporation, I will enter my PIN as my signature on the corporation's 2016 electronically filed income tax return.

Officer's signature ►

Title ► PRESIDENT**Part III Certification and Authentication**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit selected PIN. 12855511783
 do not enter all zeros

I certify that the above numeric entry is my PIN, which is my signature on the 2016 electronically filed income tax return for the corporation indicated above. I confirm that I am submitting this return in accordance with the requirements of Pub. 3112, IRS e-File Application and Participation, and Pub. 4163, Modernized e-File (MeF) Information for Authorized IRS e-File Providers for Business Returns.

ERO's signature ►

Date ►

**ERO Must Retain This Form - See Instructions
Do Not Submit This Form to the IRS Unless Requested To Do So**

For Paperwork Reduction Act Notice, see instructions.

LHA

Form 8879-C (2)

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2016.04020 GC DEALER SERVICES INC. 786